IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

RSA.No. 1157 of 2006()

AS.39/1998 of ADDL.DISTRICT COURT-I,MAVELIKKARA
OS.53/1992 of MUNSIFF COURT, MAVELIKKARA
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: APPELLANTS/APPELLANT & LEGAL HEIRS OF APPELLANT

1. NARAYANI AMMA KOCHUKUTTY AMMA,
(DIED) MANDATHI HOUSE, EDAPPON MURI,
NOORANADU VILLAGE.

LEGAL HEIRS OF DECEASED APPELLANT.

2. PARAMESWARAN PILLAI - KUTTAN PILLAI,
MANDAPATH, EDAPPON, IRANIKUZHI P.O.,
ALAPPUZHA.

3. OMANA AMMA, D/O.KUTTIAMMA,
AMBANADU, BHARANIKAVU NORTH, MAVELIKARA,
BHARANIKAVU P.O., ALAPPUZHA.

4. SARASAMMA, D/O.KUTTIAMMA,
CHEMKASSERIL, THOTTAKONAM, MUDIYOORKONAM P.O.,
PANDALAM, PATHANAMTHITTA.

5. LEELAMMA, VANPALLIL VEEDU,
IKKATTU, KODUMAN P.O., PATHANAMTHITTA.

BY ADV. SRI.R.RAMADAS

RESPONDENTS: DEFENDANTS

1. GOPALA PILLAI-VIKRAMAN PILLAI,
PALLIYIL HOUSE, EDAPPON MURI, NOORANADU VILLAGE.

2. GOPALA PILLAI, PALLIYIL HOUSE,
EDAPPON MURI, NOORANADU VILLAGE.

3. CHINNAMMA PILLAI,
PALLIYIL HOUSE, EDAPPON MURI,
NOORANADU VILLAGE.

4. SYAMALA DEVI,
PALLIYIL HOUSE, EDAPPON MURI,
NOORANADU VILLAGE.

BY

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 15/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J

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R.S.A.No.1157 Of 2006

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Dated this the 15th day of December, 2006.

J U D G M E N T

This second appeal is by the legal representatives of the plaintiff who died on 30.07.03 pending her first appeal before the lower appellate court. The first appeal was thereafter decided on 06.04.05 as per the impugned judgment.

2. Going by the relevant provisions of the Code of Civil Procedure and the law laid by the Apex Court in different decisions there was no live appeal pending before the lower appellate court to be considered and disposed of on 6.04.05, long after the death of the sole appellant. That appeal stood abated, meaning thereby that the proceedings had terminated by such abatement.

3. Therefore, this second appeal of the legal representatives of the said deceased plaintiff does not deserve to be entertained and maintained. This is all the more so because, the provisions in the Code of Civil Procedure enable them to apply to the lower appellate court to condone the delay in applying to set aside the abatement and also to make application to set aside the abatement of the first appeal

and to bring on record the legal representatives of the deceased appellant by impleadment, subject of course, to that court being satisfied of the grounds urged in support of such applications.

Hence, without prejudice to the right of the legal representatives of the plaintiff, as aforesaid, this second appeal is dismissed without entering on merits and without prejudice. It is also clarified that if the impleadment is ultimately ordered, the matter will be decided untrammeled by anything stated in the judgment impugned in this second appeal.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

SJ